

STATE OF MICHIGAN  
COURT OF APPEALS

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ATCO INDUSTRIES, INC.,

Plaintiff/Counterdefendant-  
Appellant,

v

SENTEK CORPORATION,

Defendant-Appellee,

and

ALPS AUTOMOTIVE, INC., SISINIO YAP and  
ALICIA LINAAC,

Defendants/Counterplaintiffs/Third-  
Party Plaintiffs-Not Participating,

and

SARKIS ATIKIAN and ARLENE ATIKIAN,

Third-Party Defendants-Not  
Participating.

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Before: White, P.J., and Kelly and Gribbs\*, JJ.

WHITE, P.J. (*concurring in part and dissenting in part*).

I join in the affirmance of the circuit court's grant of summary disposition to Sentek Corporation.

I dissent from the affirmance of the circuit court's grant of mediation sanctions. While I agree that *Jerico Construction, Inc v Quadrants, Inc*, \_\_ Mich App \_\_; \_\_NW2d \_\_ (Docket Nos. 233674; 233719, issued June 10, 2003) is controlling on the issue as framed by the majority, I would not apply the case here because Sentek never argued that the settlement should

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

not be considered because it was not entered pursuant to a motion, and never sought to distinguish *Broadway Coney Island, Inc v Commercial Union Ins Cos*, 217 Mich App 109, 114; 550 NW2d 838 (1996), on this basis.

In the instant case, Sentek and the circuit court judge focused on the separateness of Sentek's underlying liability and conduct in the litigation, and concluded that sanctions were appropriate. Such considerations are irrelevant under the court rule. Had the dispute below focused on the now-dispositive question whether sanctions should be imposed because the settlement was entered by stipulation and order, rather than by motion and order, plaintiff may have sought to remedy the situation, or the court may have declined to impose sanctions under MCR 2.403(O)(11).

/s/ Helene N. White